



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221223-0282]

RIN 0648-BL83

Fisheries of the Northeastern United States; Final 2023 Summer Flounder, Scup, and Black Sea Bass Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces 2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species. This action is intended to inform the public of the specifications for the start of the 2023 fishing year for summer flounder, scup, and black sea bass. This rule also implements a change to the regulations to facilitate states' participation in a Wave 1 (February) recreational black sea bass fishery.

DATES: This rule is effective January 1, 2023.

ADDRESSES: A Supplemental Information Report (SIR) was prepared for the 2023 summer flounder, scup, and black sea bass specifications and a Categorical Exclusion (CE) was prepared for the administrative change for the Wave 1 black sea bass fishery. A copy of the SIR is available online at <https://www.mafmc.org/supporting-documents> or upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, Laura.Hansen@noaa.gov, (978) 281-9225.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. The specifications here reflect the recently revised commercial and recreational allocations, which were approved by the Council and Board in December 2021. On November 17, 2022, we published a final rule (87 FR 68925) implementing the revised allocations. This action sets the ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, for 2023, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea Bass Board and Council at their joint August 2022 meeting.

Final 2022-2023 Specifications

Final specifications for summer flounder, scup, and black sea bass are outlined in Table 1.

Table 1 -- 2023 summer flounder, scup, and black sea bass specifications (million lb/metric tons (mt))

	Summer Flounder	Scup	Black Sea Bass
Overfishing Limit (OFL)	34.98 lb (15,867 mt)	30.09 lb (13,649 mt)	17.01 lb (7,716 mt)
Acceptable Biological Catch (ABC)	33.12 lb (15,023 mt)	29.67 lb (13,458 mt)	16.66 lb (7,557 mt)
Commercial ACL = Commercial Annual Catch Target (ACT)	18.21 lb (8,260 mt)	19.29 lb (8,750 mt)	7.50 lb (3,402 mt)
Commercial Quota	15.27 lb (6,926 mt)	14.01 lb (6,355 mt)	4.80 lb (2,177 mt)
Recreational ACL = Recreational	14.90 lb	10.39 lb	9.16 lb

ACT	(6,759 mt)	(4,713 mt)	(4,155 mt)
Recreational Harvest Limit	10.62 lb (4,817 mt)	9.27 lb (4,205 mt)	6.57 lb (2,980 mt)

Summer Flounder Specifications

The Council and Board approved a revised summer flounder commercial quota of 15.27 million lb (6,926 mt) and a revised RHL of 10.62 million lb (4,817 mt) for 2023. These specifications reflect the summer flounder allocations resulting from Amendment 22, which allocates 55 percent of the ABC to the commercial sector and 45 percent to the recreational sector beginning in 2023.

The final state summer flounder commercial quotas take into account any overages that occurred during the 2022 or current fishing year, through October 31, as described at 50 CFR 648.103(b)(2). The final 2023 state-by-state summer flounder commercial quotas are provided in Table 2.

Table 2 -- Final 2023 Summer Flounder State-by-State Commercial Quotas

State	Quota (lb)	Quota (mt)
ME	23,598	10.70
NH	19,100	8.66
MA	1,358,834	616.36
RI	2,205,205	1,000.26
CT	923,031	418.68
NY	1,437,768	652.16
NJ	2,304,717	1,045.40
DE	652	0.30
MD	902,214	409.24
VA	2,743,231	1,244.31
NC	3,328,558	1,509.81
Total	15,246,909	6,915.88

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-cm) total length), gear requirements, and possession limits. Changes to 2023 recreational management measures (bag limits, size limits, and seasons) are not considered in this action. Recreational management measures

for 2023 will be decided on and finalized later this year through a separate rulemaking.

Scup Specifications

The Council and Board approved a revised scup commercial quota of 14.01 million lb (6,355 mt) and a revised RHL of 9.27 million lb (4,205 mt) for 2023 (Table 1). These revisions reflect the scup allocations resulting from Amendment 22, which allocates 65 percent of the ABC to the commercial sector and 35 percent to the recreational sector beginning in 2023.

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 3.

Table 3 -- Commercial Scup Quota Allocations for 2023 by Quota Period

Quota Period	Percent Share	lb	mt
Winter I	45.11	6,319,911	2,867
Summer	38.95	5,456,895	2,475
Winter II	15.94	2,233,194	1,013
Total	100	14,010,000	6,355

The current quota period possession limits are not changed by this action, and are outlined in Table 4.

Table 4-- Commercial Scup Possession Limits by Quota Period

Quota Period	Percent Share	Federal Possession Limits (Per Trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period)

via notice in the **Federal Register**. The regulations at 50 CFR 648.122(d) specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 5.

Table 5-- Potential Increase in Winter II Possession Limits based on the Amount of Unused Scup Rolled over from Winter I to Winter II

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase to Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of illustration.

This action proposes no changes to the 2023 commercial management measures for scup, including the minimum fish size (9-inch (22.9-cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2023 will be considered later this year.

Black Sea Bass Specifications

The Council and Board approved a revised black sea bass commercial quota of 4.80 million lb (2,177 mt) and a revised RHL of 6.57 million lb (2,980 mt) for 2023. As with the other species, these specifications reflect the black sea bass allocations resulting from Amendment 22, which allocates 45 percent of the ABC to the commercial sector and 55 percent to the recreational sector beginning in 2023. The revised RHL also incorporates a change in the recreational discards projection method. The Council and

Board considered input from the Monitoring Committee on two potential methods for projecting recreational dead discards and, ultimately, recommended using an average of the two approaches (2.59 million lb (1,175 mt)). The first method sets projected 2023 recreational dead discards to the most recent 3-year average (i.e., 3.04 million lb (1,379 mt)). The second method is the same used to project recreational discards for 2021 and 2022 and this method relies on a proportional average of 2.14 million lb (989 mt). The first method does not rely on an assumption that catch will be equal to the ACL and results in a higher estimate than the second method. The Council and Board agreed that it is very challenging to predict future dead discards, especially given that recent dead discards are not currently available by weight, but by numbers of fish. To generate discard estimates, an ad hoc approach was used that applies the mean weight of a discarded fish from 2019 to the number of dead discards. The 2020 and 2021 estimated discards were 3,476,690 lb (1,577 mt) and 4,195,397 lb (1,903 mt) respectively. The Council and Board also agreed that discards in 2023 could fall between the estimates generated by the two approaches; therefore, they settled on an average of these two approaches. We solicited comments on the merits of and the rationale for the average approach in the proposed rule (87 FR 74591), but did not receive any comments related to the methods for calculating dead recreational dead discards for black sea bass.

Therefore, we are approving the discard approach and specifications, as recommended by the Council and Board. The 2023 black sea bass specifications are outlined in Table 6.

Table 6-- 2023 Black Sea Bass Specifications

2023 Specifications	million lb	mt
OFL	17.01	7,716
ABC	16.66	7,557
Commercial ACL= ACT	7.50	3,401
Projected commercial dead discards	2.70	1,224
Commercial quota	4.80	2,177
Recreational ACL=ACT	9.16	4,156
Projected recreational dead discards	2.59	1,175
RHL	6.57	2,981

Black Sea Bass February Wave 1 Fishery

We are modifying the process for the optional black sea bass February recreational opening to specify that vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations during that Wave 1 fishery. The Council and Board made this change to address challenges with the process used to waive Federal waters recreational black sea bass measures starting with the introduction of conservation equivalency to the fishery in 2022.

Comments and Responses

We received two relevant comments on the proposed specifications. One comment was not relevant to this action or applicable to the proposed measures, and is not discussed further.

The first relevant comment was in support of the summer flounder quotas. They also stated that black sea bass specifications should increase due to the expanded population of the species. We are implementing the summer flounder, scup and black sea bass specifications as proposed. These catch limits are based on the best available science. The results of the 2021 management track assessments for summer flounder, scup, and black sea bass were used in conjunction with the Mid-Atlantic Council's risk policy to set the appropriate levels of removal for each stock based on the recommendations of its Scientific and Statistical Committee.

The second relevant comment was submitted by the State of New York and the

New York State Department of Environmental Conservation (hereinafter referenced as “New York”). New York’s comment comprises a cover letter and seven attachments. The attachments were the comment letters and supporting documents that New York previously submitted in response to the proposed rule for the 2020-2021 Summer Flounder, Scup, Black Sea Bass, and Bluefish Specifications (84 FR 36046, July 26, 2019), the proposed rule for Amendment 21 to the FMP (85 FR 48660, August 12, 2020), and the proposed rule for 2022-2023 Summer Flounder, Scup, and Black Sea Bass specifications (86 FR 67014, November 24, 2021). Similar to arguments made in ongoing litigation, New York contends that the revised allocations and resulting quotas are not in accordance with Magnuson-Stevens Act’s National Standards 2, 4, 5, and 7. NMFS’ responses to New York’s previously submitted comments can be found in the final rules for those two actions (84 FR 54041, October 9, 2019, and 85 FR 80661, December 14, 2020) and are not repeated here. The state commercial summer flounder allocation formula is established in the regulations at 50 CFR 648.102(c), and as such must be followed in setting the quotas in this specifications action. Deviating from this formula would require a rulemaking to modify the current regulations, which is beyond the scope of this action.

Changes from the Proposed Rule

As described in the proposed rule, the summer flounder specifications in this final rule incorporate overage information to calculate the final state quotas that was not available previously. To calculate overages, complete landings data through October 31, 2022, is needed. This data was not yet available prior to the preparation of the proposed rule. Incorporating this overage information is required and formulaic.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder,

Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements 2023 specifications for the summer flounder, scup, and black sea bass fisheries. Due to a Court order, these specifications should be effective by the start of the fishing year on January 1, 2023.

This rule is being issued at the earliest possible date. Preparation of the final rule is also dependent on the analysis of commercial summer flounder landings for the prior fishing year (2021) and the current fishing year through October 31, 2022, to determine whether any overages have occurred and adjustments are needed to the final state quotas. This process is codified in the summer flounder regulations and, therefore, cannot be performed earlier because complete data is not available until, at the earliest, October 31. Annual publication of the summer flounder quotas prior to the start of the fishing year, by December 31, is required by Court Order in *North Carolina Fisheries Association v. Daley*.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In §648.145, revise paragraph (a) to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 5 black sea bass in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the

conservation equivalent measures described in § 648.151. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding possession limit during that Wave 1 fishery. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 5 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.150 and abide by state regulations.

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3. Revise §648.146 to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through October 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding fishing season during that Wave 1 fishery.

4. In §648.147 revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 14 inches (35.56 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151.

However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding size requirements during that Wave 1 fishery.

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